SOVEREIGNS — TORT LIABILITY FOR MALICIOUSLY PERSUADING SOVEREIGN TO ACT. — The defendant maliciously persuaded a foreign sovereign to interfere with the plaintiff's business within the foreign territorial jurisdiction. *Held*, that the defendant is not liable in tort. *American Banana Co.* v. *United Fruit Co.*, U. S. Sup. Ct., April 26, 1909.

The court lays down the dictum that a sovereign makes lawful, by following, the persuasion addressed to it in its jurisdiction. Likewise the sovereign has been held to render incognizable, by ratifying, the previous trespass of its officer upon a foreign subject. *Buron* v. *Denman*, 2 Exch. 167. For such an "act of state" presents a political question. See 22 HARV. L. REV. 132. So does, possibly, the examination of the causes of such an act. *Cf.* 2 STEPHEN, HIST. CRIM. L. 65. Analogously, the arguments which prevailed with a domestic legislature cannot be inquired into, to upset a statute. *Attorney-General* v. *Williams*, 178 Mass. 330. If, then, the persuasion is not examinable at all, the present case has no need of the fictitious relation back. But the act of one subject towards another through the intervening act of a sovereign does not necessarily bring into question the legality of the intervening act; for, in general, to induce legal action may be tortious. See 20 HARV. L. REV. 261. More particularly, the ordinary case of malicious prosecution presents the situation of tortious persuasion to rightful governmental action; and a foreign malicious prosecution may be actionable. *Castrique* v. *Behrens*, 3 E. & E. 709. On this analogy it would seem that persuasion of a foreign sovereign within its jurisdiction, and all the more if outside, might be the ground of tort liability.

STATES — EFFECT OF GRANT OF CONCURRENT JURISDICTION OVER BOUNDARY RIVERS. — An act of Congress granted to Oregon and Washington concurrent jurisdiction over offenses committed on the Columbia River, whose main channel forms the boundary between the two states. An Oregon statute prohibited fishing with purse nets in the river; while a Washington ordinance provided for the licensing of the use of such nets. A Washington citizen, who had been so licensed, was using the nets on the Washington side of the channel. He was taken by Oregon officials and indicted in an Oregon court under the Oregon statute. *Held*, that Oregon has no jurisdiction. *Nielsen* v. *Oregon*, 212 U. S. 315. See NOTES, p. 599.

TAXATION — WHERE PROPERTY MAY BE TAXED — TAX ON RECEIPTS ISSUED FOR GOODS WAREHOUSED ABROAD. — The plaintiff state sued to recover taxes on whiskey owned by the defendant. The whiskey was in Germany, but the defendant held German warehouse receipts within the jurisdiction of the plaintiff state. Two lower courts held the tax void under the Fourteenth Amendment, since the situs of the whiskey was outside the state. The highest state court sustained the tax as a tax on the receipts. *Held*, that the record presents only the validity of a tax on the whiskey itself; that the warehouse receipts are only mentioned to prove the whiskey domiciled in Kentucky; and hence the tax is void. *Selliger* v. *Commonwealth of Kentucky*, U. S. Sup. Ct., Apr. 5, 1909.

The tax on the whiskey itself was invalid; for, regardless of the common practice existing before the Fourteenth Amendment of taxing at the domicile of the owner personalty situated outside the jurisdiction, the Supreme Court has decided that the Fourteenth Amendment is thereby contravened. *Del., etc., Co.* v. *Pennsylvania*, 198 U. S. 341; *Union Refrigerator Transit Co.* v. *Kentucky*, 199 U. S. 194. Accordingly the plaintiff contended that the situs of the warehouse receipts within the state proved that the whiskey itself was domiciled within the state. This could not be true unless the receipts represented the property. Whether a written instrument is a symbol of property is to be determined by the law of the place of issuing. *Ory* v. *Winter*, 4 Mart. N. S. (La.) 277. Hence the effect of the receipts here was governed by German law, and nothing appeared on the record showing that German law made them symbols of the property. The decision is therefore incontrovertible. However, if the receipts were symbols of property, they should be taxable at their

situs. Furthermore, the opinion intimates that a tax on negotiable receipts themselves as representing value within the jurisdiction, owing to their negotiability, might be supportable. *Cf.* *Stern* v. *The Queen*, [1896] 1 Q. B. 211; but *cf.* *Buck* v. *Beach*, 206 U. S. 392, and cases cited in 3 Beale, Cas. on Conf. of L. 132–151.

TORTS — INTERFERENCE WITH BUSINESS — EFFECT OF WRONGFUL MOTIVE. — The defendant, a banker, a man of wealth and influence in the community, maliciously established a barber shop, and used his personal influence to attract customers to his shop from the plaintiff's barber shop, not for the purpose of serving any legitimate end of his own, but for the sole purpose of injuring the plaintiff, whereby the plaintiff's business was ruined. *Held*, that the plaintiff has a good cause of action. *Tuttle* v. *Buck*, 119 N. W. 946 (Minn.).

This case is noteworthy as squarely deciding that an act may be a tort because of the wrongful motive of the actor. The decision is a strong one, and shows a tendency to recognize a principle that has made its way with much difficulty in the face of some of our greatest authorities. It is interesting to note that this very case, while it presents a novel decision, has often been suggested as a test case by eminent judges and writers. For a full discussion of this principle see 2 HARV. L. REV. 19; 8 *ibid.* 1, 200, 377; 11 *ibid.* 449; 15 *ibid.* 427; 16 *ibid.* 237; 17 *ibid.* 511; 18 *ibid.* 411, 423, 444; 20 *ibid.* 253, 345, 429; 22 *ibid.* 501.

TRANSFER OF STOCK — CONVERSION BY INNOCENT HOLDER OF STOCK CERTIFICATES INDORSED IN BLANK. — The plaintiff bank, to which stock certificates indorsed in blank had been pledged, delivered them to an employé to be surrendered to the pledgor on payment of the loan. The employé through the defendant, a stockbroker, who was innocent of these facts, sold the stock and absconded with the proceeds. The bank sued the defendant for conversion. *Held*, that the defendant having acted on the apparent ownership of the bank's employé should be protected. *National Safe Deposit, Savings, and Trust Co.* v. *Hibbs*, Chic. Leg. News 296 (D. C., Ct. App., Feb. 2, 1909).

At common law a stock certificate indorsed in blank is a non-negotiable instrument. But for mercantile convenience it has come to be looked on by the courts as "quasi-negotiable," so as to give a *bona fide* purchaser from the agent or pledgee of the owner title by estoppel. *McNeil* v. *Tenth National Bank*, 46 N. Y. 325. When, however, a certificate is lost or stolen, an innocent purchaser from the finder or thief acquires no title. *East Birmingham Land Co.* v. *Dennis*, 85 Ala. 565. As to whether an innocent agent or broker in selling for a fraudulent pledgee is guilty as a converter, there is a conflict of authority. It would seem that if an innocent purchaser is protected on the theory of estoppel the principal case was clearly right in giving a similar defense to an innocent agent, since in this respect consideration is immaterial. *Cf.* *Higgins* v. *Lodge*, 68 Md. 229. But see *Kimball* v. *Billings*, 55 Me. 147. Mercantile convenience would be served if stock certificates were made negotiable by statute, so that the holder of a certificate indorsed in blank would have an absolute right to registration on the books of the company instead of merely possessing documentary evidence of that right.

WILLS — EXECUTION — EXECUTOR AS ATTESTING WITNESS. — The attesting witnesses to a will were also named as executors. A statute provided that a will be attested by "credible witnesses"; that any beneficial interest given to an attesting witness should be void unless the will were otherwise sufficiently attested; and that the witness beneficially interested be compellable to testify on the residue of the will. *Held*, that the executors named are not "credible witnesses" within the statute, but that they may be compelled to testify, and will be barred from acting as executors. *Jones* v. *Grieser*, 87 N. E. 295 (Ill.).

The courts have defined the terms "credible" and "competent," when applied to attesting witnesses, as meaning persons legally qualified to testify in a court of justice. *In the matter of Noble*, 124 Ill. 266. And the competency is to be judged as of the time of attestation. *Hoft* v. *State*, 72 Tex. 281.